UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

AUDREY L. KING,

Plaintiff,

-against-

RENSSELAER COUNTY, VAN RENSSELAER MANOR, DANIEL DELGIACO, JOHN EVERS and TERRY DUNCAN,

Defendants.

NOTICE OF REMOVAL

Index No.: 229158

PLEASE TAKE NOTICE, that Defendants, County of Rensselaer, Van Rensselaer Manor, Daniel DelGiaco, John Evers, and Terry Duncan, by and through their attorneys, Bailey, Kelleher & Johnson, P.C., hereby respectfully submit this Notice pursuant to 28 U.S.C. § 1446, to remove this action from the Supreme Court of the State of New York, County of Rensselaer, to the United States District Court for the Northern District of New York, pursuant to 28 U.S.C. §§ 1441(a), 1441(b), and 1331, in support of this application represents the following:

1. County of Rensselaer, Van Rensselaer Manor, Daniel DelGiaco, John Evers, and Terry Duncan (hereinafter "defendants"), are the defendants in the above-captioned civil action now pending in the Supreme Court of the State of New York, County of Rensselaer, Index No. 229158 (hereinafter "State Action").

2. Upon information and belief, defendants received a copy of plaintiff's Verified Complaint in the State action on or about July 22, 2009, a copy of which is attached hereto as **Exhibit "A"**.

3. This notice is filed with this Court within thirty (30) days after receipt of the Complaint in the State action by defendants.

4. While plaintiff filed a Summons with Notice, the Summons stated that the action was based on employment and did not provide sufficient facts to support a removal petition. Whitaker v. American Telecasting, Inc, 261 F.3d 196 (2d Cir. 2001). A copy of plaintiff's Summons with Notice is attached hereto as **Exhibit "B"**.

5. Plaintiff's Complaint alleges causes of action brought pursuant to New York State Executive Law §290, 29 U.S.C. §2601, and state common law. Specifically, plaintiff Complaint alleges that she was sexually harassed while working for defendants, Rensselaer County and Van Rensselaer Manor, that defendants failed to provide her with a safe work environment and retaliated against her when she complained of the alleged harassment. Furthermore, plaintiff's Complaint alleges that she was an eligible employee under the Family Medical Leave Act and that she was disciplined and retaliated against in violation of the Act for taking time off for medical issues relating to her pregnancy. See Exhibit "A"

6. On or about August 10, 2009, issue was joined by service of Defendants' Answer, a copy of which is attached hereto as **Exhibit "C"**.

7. An Amended Answer to plaintiff's Complaint was served on August 20, 2009 and is attached hereto as **Exhibit "D"**.

8. The grounds for removal are that this Court has original jurisdiction of

plaintiff's claim that she was improperly disciplined for taking medical leave from work in for violation of the Family Medical Leave Act pursuant to 29 U.S.C. §2617.

9. Accordingly, the State action is removable to this Court pursuant to 28 U.S.C. § 1441(a), 29 U.S.C. §2601, as this Court has original jurisdiction pursuant to 28 U.S.C. §1331.

WHEREFORE, defendants, Defendants, County of Rensselaer, Van Rensselaer Manor, Daniel DelGiaco, John Evers, and Terry Duncan, respectfully submit this joint application for the removal of the action now pending in the Supreme Court of the State of New York, Rensselaer County, to the United States District Court for the Northern District of New York.

Dated: August 20, 2009

Bailey, Kelleher & Johnson, PC

By: ______________________
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